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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1183

CARBON FUEL COMPANY,

Petitioner,

vs.

UNITED MINE WORKERS OF AMERICA; DISTRICT 17, UNITED MINE WORKERS OF AMERICA; AND LOCAL UNIONS NOS. 6572, 7626 AND 2236, UNITED MINE WORKERS OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For the Fourth Circuit

PETITIONER'S REPLY MEMORANDUM

DAVID D. JOHNSON
FORREST H. ROLES
JACKSON, KELLY, HOLT & O'FARRELL
P. O. Box 553
Charleston, West Virginia 25322

Counsel for Petitioner

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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THE SUBSTANTIVE FEDERAL LABOR POLICY GOVERNING THE ISSUE IS NOT "WELL ESTABLISHED".

1. Respondents Incorrectly Restate The Question Presented.

Respondents assert in their opposing brief (p. 3) that: "The narrow question on the record and Petition * * * is, * * * whether the unions were obligated to take steps *beyond those already taken*—which the unions regarded as drastic and counterproductive—to end stoppages the Unions neither started nor encouraged." (Emphasis supplied) Respondents misconceive the holding of the lower court. The court did not hold that the steps "already

taken" by Respondents were all that could be reasonably required of them under the circumstances; but held that they were not required to take *any* reasonable steps to prevent or end the strikes. Respondents' "Restatement of Question Presented" (Br. p. 3) indirectly recognizes the indefensibility of the lower court's ruling that: "If [Respondents] had done nothing when plaintiff called on them to help get the men back to work, their would have been no liability on the part of the defendants." [App. A, pp. A9-10] The lower court did not set aside the judgments against the Respondents because it found that, as a matter of law, they had taken reasonable steps to end the strikes, a factual issue which the trial court jury resolved against them; but because it held that they were not obligated to take *any* steps to end the strikes, and that the trial court, therefore, erred in allowing the jury to determine whether the steps taken were reasonable.

2. The "Substantive Federal Labor Policy" Has not Been Established With Respect To The Question.

Respondents urge (Br. p. 3) that the lower court's ruling "is entirely consistent with substantive federal labor policy well established by this Court, the Courts of Appeals and the National Labor Relations Board." Petitioner submits that the "substantive federal labor policy" applicable to the issue presented has not been "well established by this Court"; and that, as pointed out in the petition, pp. 6-8, there is an irreconcilable conflict between various Circuit Courts of Appeals as to what that substantive federal labor policy is.

United Mine Workers v. *Cornado Coal Co.*, 259 U.S. 334 (1921); and *UMWA* v. *Gibbs*, 383 U.S. 715 (1966), relied upon by Respondents, do not establish the federal labor policy as to the obligation of a labor organization which

is the exclusive collective bargaining representative of its members to act affirmatively to prevent its members and subdivisions from acting in violation of the contract commitments which it has made as their representative in collective bargaining.

Cornado and *Gibbs, supra,* did not deal with the obligation of the UMWA to take action to end unauthorized strikes by its members and subdivisions in violation of a collective bargaining contract. *Coronado, supra,* was a suit for damages for an alleged conspiracy in violation of the Sherman Act, and for the violent destruction of property in furtherance of that conspiracy. No question concerning the obligation of the UMWA to maintain the integrity of its collective bargaining contracts against breaches by its subordinate unions and members was involved. In *Gibbs, supra,* the issue was to the sufficiency of proof, under Section 6 of the Norris-LaGuardia Act, to show that the UMWA had ratified violent acts of its members and Locals for which the plaintiffs sought damages in a tort action. The liability of a parent union for the violent and unlawful acts of its members and locals which it has not authorized or ratified is a different question from that of the obligation of a parent union to take reasonable steps to maintain the integrity of a collective bargaining agreement, entered into by it as the exclusive bargaining representative of its members, against repeated breaches by its members and locals.

The decisions of the Fourth and Sixth Circuits, relied upon by Respondents in their brief (pp. 4-5) as establishing the federal labor policy applicable to the question presented, represent but one side of the conflict between the Circuits pointed out in the petition, pp. 6-8. Nor is it correct that the decisions of the Fifth and Seventh Cir-

cuits, cited in Respondents' brief, p. 5, have aligned those Circuits with the view that the UMWA has no obligation to exercise all reasonable means to end strikes in violation of the contract. See Petition, p. 7, n. 2.

Respondents assert (Br. p. 7) that the federal labor policy of uninterrupted operation during the term of an agreement is not at stake, because "there was no agreement as to uninterrupted operation". This is not correct. The labor contracts contained an implied promise not to strike over disputes subject to settlement under the grievance and arbitration procedures, and explicitly bound the Respondents to "maintain the integrity" of that promise. *Gateway Coal Co.* v. *UMWA*, 414 U.S. 368 (1974).

Respondents further argue that the federal labor policy favoring labor stability during the life of collective bargaining agreements, and the enforceability of collective bargaining agreements to that end, must be sacrificed in the interests of concomitant federal policy "favoring the establishment and continued existence of labor unions". (Br. p. 7) Respondents assert that a requirement that they use all reasonable means to end strikes in violation of the implied no-strike provisions of the contract: "could mean the destruction of labor unions". There is, however, no decision of this Court, nor any otherwise established federal labor policy, that the Congressional intent, deliniated in *Textile Workers Union* v. *Lincoln Mills, 353 U.S.* 448 (1957), to make collective bargaining agreements enforceable against unions, is limited to judgments for damages against subordinate local unions of limited financial responsibility, and stops short of the recovery of damages for breach of contract from financially responsible parent unions which actually make and enter into such agreements.

The International Union, UMWA, not its subordinate locals, is the exclusive bargaining representative of all of its members. It is the bargaining agent that makes the contracts. It comes to the bargaining table purporting to represent all of its members, and holds itself out as able to enter into binding and meaningful commitments as consideration for the commitments made by the operators. As the court pointed out in *U.S. Steel Corp.* v. *UMWA*, 100 LRRM 2654 at 2659 (3rd Cir. Feb. 9, 1979): "The National Bituminous Wage Agreement of 1974 runs between each signatory employer and 'the International Union, United Mine Workers of America * * * on behalf of each member thereof.' In short, while each employer signed the 1974 Agreement, the International signed on behalf of all the union members. Individual Locals are not parties to the contract. The dispute resolution system established by the 1974 Agreement that begins at the mine level is a convenient method of resolving employee grievances; however, it cannot erase the overall contractual relationship running between [the coal operator] and the United Mine Workers on behalf of its members. In fact, Article XXIII on Settlement of Disputes never mentions the UMW Locals. Rather, the Article speaks in terms of resolving disputes between the Mine Workers and the Employer. * * *"

There is no federal labor policy that the International Union, in such circumstances, must be relieved of responsibility to use all reasonable means at its disposal to maintain the integrity of the contract it has made; or that it is to be immunized, because of policy favoring "the establishment and continued existence of labor unions", against liability for its failure to do so.

THE DECISION BELOW IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS.

Respondents' argument that "there is no conflict between the Courts of Appeals" (Br. p. 13) is based upon Respondents' wishful thinking that the courts which have held that the UMWA has a duty to "use its best efforts" to end strikes engaged in by its members and subdivisions in violation of the contract did not mean what they said. Thus, Respondents characterize the decisions of the Third Circuit in *United States Steel Corp.* v. *UMWA*, 534 F.2d 1063 (3rd Cir. 1976), *Republic Steel Corp* v. *UMWA*, 570 F.2d 467 (3rd Cir. 1978); and *Bituminous Coal Operators Association* v. *International, Union, UMWA*, 585 F.2d 586 (3rd Cir. 1978), as "part of an evolving and, at the present time, immature body of case law more indicative of *intra*-Circuit differences than anything else." (Br. p. 13) This argument by Respondents is surprising in the light of the Third Circuit's very recent decision in *U.S. Steel Corp.* v. *UMWA, supra,* (Decided Feb. 9, 1979) 100 LRRM 2654.

In *U.S. Steel Corp.* v. *UMWA, supra,* 100 LRRM at 2660, in which the Third Circuit reaffirmed its holdings that UMWA may be held liable for a failure to "exercise all reasonable efforts" to halt strikes in violation of the implied no-strike provisions of the contract, the court said:

> "* * * *The International and the District do not dispute* that under the reasoning of this court, in *Republic Steel Corp.* v. *United Mine Workers*, 570 F.2d 467, 97 LRRM 2836 (3rd Cir. 1978), they may be held liable for failure to 'exercise all reasonable efforts to halt conduct of [their] members which is proven to be unlawful.' " * * * (Emphasis supplied)

Thus, Respondents appear to have conceded in the Third Circuit, contrary to their argument here, that their obligation to "exercise all reasonable efforts" to end strikes by their locals and members in derogation of the contract arbitration clauses is the established law in the Third Circuit.

Respondents' efforts to portray the Eighth Circuit's decision in *Wagner Electric Co.* v. *Local 1104 Electrical Workers*, 496 F.2d 954 (1974) as being "based on fact findings that the strike was informally authorized or ratified" (Br. pp. 9-10), ignores the court's holding that the fact that the union did not authorize the strike, and had disavowed it and encouraged its members to return to work, was not sufficient to relieve it of liability; and the court's plain statement that: "A union is required to use its best efforts to return striking workers to their jobs if it is not to be held responsible for their actions." Id. p. 956

Respondents' suggestion (Br. pp. 11-12) that the Third Circuit's view that the International may be held liable for a failure to exercise all reasonable efforts to halt strikes is really applicable only to claims for injunctive relief is refuted by that court's decisions in *Republic Steel Corporation* v. *UMWA, supra,* and *U.S. Steel Corp.* v. *UMWA, supra,* (1979), in both of which the principle was applied to the liability of the UMWA in damages. Likewise, Respondents' claim that the Third Circuit's decisions are peculiar to strikes "which involve intercompany and interstate activities and requests for prospective relief" (Br. p. 13), is refuted by *U.S. Steel Corp.* v. *UMWA, supra,* (1979), in which the UMWA conceded, and the court held, that the "all reasonable efforts" requirement was applicable in the Third Circuit to a suit

for damages for a past strike, involving the mines of a single employer, in the same state.

Finally, Respondents' further suggestion (Br. p. 13) that the record herein does not contain "the 'integrity of contract' arguments made in *Republic Steel", is* unfounded. The "integrity of the contract" language is contained in both of the contracts before the Lower Court; and it was specifically relied upon by the Petitioner in that Court, and in the Trial Court. The Lower Court clearly refused to give it the effect given to it by the Third Circuit, when it said in its opinion (A-8) that: "In [U.S. Steel v. UMW, 534 F.2d 1063] the Third Circuit stated that '[a] covenant to maintain the integrity of the contract necessarily embraces a reasonable efforts obligation to comply with the [implied] no-strike promise.' Id., at 1073. In all deference, we cannot agree with this conclusion." The Lower Court further noted, A-8, n. 4, that: "We also decline to follow the rationale applied in the recent case of *Republic Steel Corp.* v. *U.M.W.A. of America,* 570 F.2d 467 (3rd Cir. 1978)."

CONCLUSION

For all the reasons above asserted, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID D. JOHNSON
FORREST H. ROLES
JACKSON, KELLY, HOLT & O'FARRELL
1500 One Valley Square
Charleston, West Virginia 25322

Counsel for Petitioner